

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
JOHN HAMLETT,**

Plaintiff,

**9:17-cv-0939
(GLS/TWD)**

v.

SERGEANT STOTLER et al.,

Defendants

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

JOHN HAMLETT

08-A-0598

Green Haven Correctional Facility

P.O. Box 400

Stormville, NY 12582

BOND, SCHOENECK & KING, PLLC

One Lincoln Center

Syracuse, NY 13202

JOHN F. BOYD, ESQ.

GEORGE H. LOWE, ESQ.

FOR DEFENDANTS:

HON LETITIA JAMES

New York State Attorney General

The Capitol

Albany, NY 12224

RYAN L. ABEL

Assistant Attorney General

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following an Amended Order and Report-Recommendation (R&R) by Magistrate Judge Thérèse Wiley Dancks duly filed on August 15, 2019. (Dkt. No. 56.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.¹

No objections having been filed, and the court having reviewed the R&R for clear error, it is hereby

ORDERED that the Amended Order and Report-Recommendation (Dkt. No. 56) is **ADOPTED** in its entirety; and it is further

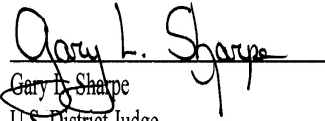
ORDERED that defendants' motion for summary judgment (Dkt. No. 16) is **DENIED**; and it is further

¹ Following this court's adoption of a prior Order and Report-Recommendation, (Dkt. No. 28), Judge Dancks presided over an exhaustion hearing, which necessarily reopened defendants' motion seeking summary judgment on a failure to exhaust theory, (Dkt. No. 45). Following that hearing, defendants submitted supplemental briefing and plaintiff John Hamlett submitted proposed findings of fact and conclusions of law. (Dkt. Nos. 50, 52.) The R&R does not specifically recommend the denial of defendants' motion, but this court interprets it to have that effect based upon the specific recommendation, which is now adopted, that the administrative remedies under the grievance program were rendered "unavailable" within the meaning of *Ross v. Blake*, 136 S. Ct. 1850 (2016).

ORDERED that the Clerk provide a copy of this Order to the parties in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

September 11, 2019
Albany, New York



Gary L. Sharpe
U.S. District Judge